Department of Justice

FOR IMMEDIATE RELEASE
WEDNESDAY, AUGUST 29, 2001
WWW.USDOJ.GOV

AT
(202) 616-2777
TDD (202) 514-1888

JUSTICE DEPARTMENT CLEARS WAY FOR SALES AGENCY AGREEMENT ON ENDOSCOPY ACCESSORY PRODUCTS

WASHINGTON, D.C. -- The Department of Justice today announced that it has cleared the way for a proposed dealer and sales agency agreement for endoscopy accessory products between Olympus America Inc. (OAI) and C.R. Bard Inc. (Bard). Endoscopy accessory products (EAPs) are medical instruments used with other endoscopy equipment -- endoscopes and video systems -- to examine the upper and lower digestive tracks and the bronchial trees of patients.

The Department granted business review clearance in a letter from Charles A. James, Assistant Attorney General of the Antitrust Division, to counsel for the companies. The letter indicated the proposal is not likely to create or increase market power and could generate procompetitive efficiencies that could benefit consumers.

OAI sells both a limited line of EAPs and other endoscopy equipment manufactured by its parent company. Bard manufactures and sells a full range of EAPs but does not sell other endoscopy equipment.

Under the proposed agreement, Bard is designated as the exclusive dealer for the sales of Olympus-branded EAPs, and OAI will become a non-exclusive sales agent of Bard for both Olympus-branded and Bard-branded EAPs. The sales force of each party will sell the full line of all Olympus-branded and Bard-branded EAPs and will be compensated under commission structures that provide

equal financial incentives to sell both brands. OAI and Bard will each be entitled to a share of any incremental revenue that its sales force generates from sales of the other company's EAPs.

James said that by economically integrating the sales forces of the companies, the proposed collaboration could produce procompetitive benefits that OAI and Bard could not produce separately. He explained that under these circumstances a Rule-of-Reason analysis was appropriate and that, based on that analysis, the proposed marketing and sales agreement was not likely to result in anticompetitive harm.

According to the parties, the only EAPs sold by both OAI and Bard are biopsy forceps, which come in two varieties: disposable and reusable. Nearly all of the biopsy forceps sold by OAI are reusable, while virtually all the biopsy forceps sold by Bard are disposable.

The Department concluded that whether the disposable and reusable biopsy forceps are in the same or separate markets, the proposed collaboration would not raise market power concerns. Even if reusable and disposable biopsy forceps are in a single market, the parties' combined shares of all reusable and disposable biopsy forceps do not appear to be significantly above the twenty percent "safety zone" for competitor collaborations established by the *Antitrust Guidelines for Collaborations Among Competitors*, issued by the Federal Trade Commission and the U.S. Department of Justice in April 2000.

Under the Department's business review procedure, an organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division will challenge the action under the antitrust laws.

A file containing the business review request and the Department's response may be examined in the Antitrust Documents Group of the Antitrust Division, Suite 215, Liberty Place Building, 325 7th

Street, N.W., Department of Justice, Washington, D.C. 20004. After the 30-day period, the documents supporting the business review will be added to the file.

###

01-435